

Message Text

LIMITED OFFICIAL USE

PAGE 01 STATE 115301

65

ORIGIN L-03

INFO OCT-01 EUR-12 IO-13 ISO-00 JUSE-00 MC-02 FBIE-00 PM-04

SCCT-01 CIAE-00 INR-07 NSAE-00 AS-01 /044 R

DRAFTED BY L/M:JHSMITH:MFM

APPROVED BY L/M:KEMALMBORG

EUR/NE:CWSCHALLER

EUR/NE:J.SHUMATE

DESIRED DISTRIBUTION

L, EUR

----- 073087

R 111828Z MAY 76

FM SECSTATE WASHDC

TO AMEMBASSY DUBLIN

USMISSION GENEVA

AMEMBASSY LONDON

LIMITED OFFICIAL USE STATE 115301

E.O. 11652: N/A

TAGS: ALIT, EI, SZ, UK

SUBJECT: U.S. V. BYRNE, ET AL

GENEVA FOR GEORGE ALDRICH, DEPUTY LEGAL ADVISER, LAWS OF
WAR CONFERENCE

SUMMARY: THE JUSTICE DEPARTMENT HAS OBTAINED INDICTMENTS
AGAINST BYRNE AND FOUR OTHERS FOR, IN PART, CONSPIRACY TO
VIOLATE THE MUNITIONS CONTROL ACT (22 USC 1934) AND FAILURE
TO REGISTER WITH THE SECRETARY OF STATE AS AGENTS OF A
FOREIGN GOVERNMENT (18 USC 951). THE INDICTMENT ALLEGES
THAT BYRNE AND THE OTHERS PURCHASED 400 RIFLES FOR ILLEGAL
EXPORT TO THE IRA IN NORTHERN IRELAND. IN THE COURSE OF
PROSECUTION OF THE COUNT FOR FAILURE TO REGISTER AS AN
AGENT OF A FOREIGN GOVERNMENT IT MAY BECOME NECESSARY TO
LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 STATE 115301

ESTABLISH THAT THE IRA IS A "BODY OF INSURGENTS" WITHIN

THE MEANING OF 18 USC 11. THIS MESSAGE REQUESTS COMMENTS OF ALL ADDRESSEES OF THE IMPLICATIONS OF POSSIBLE STATE DEPARTMENT PARTICIPATION IN ESTABLISHING THAT IRA IS A BODY OF INSURGENTS. ALDRICH'S COMMENTS REQUESTED ON TECHNICAL QUESTIONS OF WHAT IS "INSURGENCY" AND WHETHER RECOGNITION IS NECESSARY ELEMENT. END SUMMARY.

1. A FEDERAL GRAND JURY IN PHILADELPHIA HAS RETURNED A THREE PART INDICTMENT AGAINST NEIL BYRNE, DANIEL CAHALANE, DANIEL DUFFY, VINCENT CONLON AND THOMAS REGAN. PART I ALLEGES CONSPIRACY TO VIOLATE 22 USC 1934, THE MUNITIONS CONTROL ACT, AND 18 USC 951, FAILURE TO REGISTER WITH THE SECRETARY OF STATE AS AN AGENT OF A FOREIGN GOVERNMENT. PART II CONSISTS OF 15 SPECIFIC COUNTS OF VIOLATION OF THE MUNITIONS CONTROL ACT BY PURCHASING APPROXIMATELY 400 RIFLES FOR THE PURPOSE OF EXPORTING THEM WITHOUT A LICENSE. PART III CONSISTS OF SPECIFIC COUNTS AGAINST EACH DEFENDANT FOR FAILURE TO REGISTER AS AN AGENT OF A FOREIGN GOVERNMENT IN VIOLATION OF 18 USC 951.

2. THE MAJOR ELEMENTS OF THE GOVERNMENT'S CASE ARE THAT THE DEFENDANTS ALLEGEDLY PURCHASED APPROXIMATELY 400 RIFLES IN THE UNITED STATES WITH THE INTENTION OF SMUGGLING THEM TO THE IRA IN NORTHERN IRELAND. SOME 200 OF THESE RIFLES HAVE BEEN DISCOVERED IN THE HANDS OF THE IRA.

3. PART III OF THE INDICTMENT PRESENTS THE STATE DEPARTMENT WITH A DIFFICULT PROBLEM. 18 USC 951 REQUIRES THAT PERSONS WHO ACT AS AN AGENT OF A FOREIGN GOVERNMENT WITHOUT PRIOR NOTIFICATION TO THE SECRETARY OF STATE SHALL BE FINED NOT MORE THAN \$5,000 OR IMPRISONED NOT MORE THAN 10 YEARS, OR BOTH. 18 USC 11 DEFINES FOREIGN GOVERNMENT AS INCLUDING "ANY GOVERNMENT, FACTION, OR BODY OF INSURGENTS WITHIN A COUNTRY WITH WHICH THE UNITED STATES IS AT PEACE, IRRESPECTIVE OF RECOGNITION BY THE UNITED STATES." THE DEFENDANT'S ATTORNEY HAS FILED A PRE-TRIAL MOTION SEEKING DISMISSAL OF THE CHARGES, OR, IF THAT IS DENIED, A HEARING TO DETERMINE "THE STATUS OF THE IRA". THE DEFENDANTS ARGUE THAT THE IRA IS NOT A BODY OF INSURGENTS WITHIN THE MEANING OF 18 USC 11. THEY CONTEND THAT THE EXECUTIVE LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 STATE 115301

BRANCH MUST MAKE A DETERMINATION THAT THE IRA IS A BODY OF INSURGENTS AND THAT, IN THE ABSENCE OF SUCH A DETERMINATION, THE MATTER MUST BE DECIDED BY THE COURT.

4. L/M HAS SUGGESTED TO JUSTICE DEPARTMENT PROSECUTOR THAT HE SEEK TO AVOID HAVING THE COURT CONSIDER INTERNATIONAL LEGAL PRINCIPLES IN DECIDING WHETHER IRA IS A BODY OF INSURGENTS WITHIN THE MEANING OF 18 USC 11.

JUSTICE INTENDS TO ARGUE THAT THE PLAIN MEANING OF THE STATUTE, AND IF POSSIBLE ITS LEGISLATIVE HISTORY, INCLUDES THE IRA AND THE COURT NEED NOT CONSIDER INTERNATIONAL LAW. HOWEVER, AS A FALLBACK, L/M IS PREPARING A MEMORANDUM BASED UPON WHITEMAN'S DIGEST ON THE MEANING OF THE TERM INSURGENTS IN INTERNATIONAL LAW.

5. IF THE COURT REACHES THIS QUESTION AND IS NOT WILLING TO MAKE A DETERMINATION OF LAW BASED ON FACTUAL EVIDENCE ON ITS OWN, IT MAY CALL FOR TESTIMONY BY DEPARTMENT TO DETERMINE WHETHER IRA FITS THE DEFINITION OF A BODY OF INSURGENTS OR REQUIRE THE GOVERNMENT TO AFFIRMATIVELY PROVE THAT IRA IS BODY OF INSURGENTS BY STATE DEPARTMENT OFFICIAL STATEMENT. DEPARTMENT WOULD BE VERY RELUCTANT TO TESTIFY BECAUSE ANY DEPARTMENT WITNESS WOULD BE ASKED WHETHER THE DEPARTMENT BELIEVES IRA IS A BODY OF INSURGENTS. OFFICIAL STATEMENT CREATES SAME PROBLEM. DEPARTMENT HAS STEADFASTLY REFUSED TO CONSIDER THE IRA AS INSURGENTS BECAUSE IT WOULD ACKNOWLEDGE A LEVEL OF STANDING FOR THE IRA, THE DEPARTMENT (AND THE U.K.) DO NOT WISH TO RECOGNIZE. IT WOULD ALSO UPSET OUR CONSISTENT EFFORTS TO MAINTAIN USG POLICY OF NON-INVOLVEMENT IN NORTHERN IRELAND. ON OTHER HAND, REFUSAL COULD RESULT IN DISMISSAL OF CASE.

6. FOR ALL ADDRESSEES: WHAT ARE YOUR VIEWS ON ROLE STATE DEPARTMENT SHOULD TAKE IN ASSISTING JUSTICE ESTABLISH THAT IRA IS A BODY OF INSURGENTS. WHAT WOULD BE REACTION OF THE HMG AND GOI IF DEPARTMENT TESTIFIED THAT, FOR PURPOSES OF 18 USC 11, IRA SHOULD BE CONSIDERED A BODY OF INSURGENTS. IN ADDITION, REQUEST ALDRICH COMMENT ON WHAT CURRENT LEGAL STANDARDS FOR INSURGENCY ARE AND PART, IF ANY, OFFICIAL GOVERNMENT RECOGNITION PLAYS. ONE POSSIBLE RESULT IS THAT GOVERNMENT COULD ESTABLISH INTERNATIONAL LAW LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 04 STATE 115301

AND FACTS TO SHOW INSURGENCY WITHOUT OFFICIALLY RECOGNIZING IT.

7. FYI: UNFORTUNATELY, THE INDICTMENT CHARACTERIZES THE IRA AS A "BODY OF INSURGENTS". THIS RESULTS FROM FAILURE TO CONSULT WITH DEPARTMENT PRIOR TO SEEKING INDICTMENT. AT L/M URGING, JUSTICE NOW INTENDS TO ARGUE THAT THE LANGUAGE OF THE STATUTE, NOT THE INDICTMENT IS DETERMINATIVE, AND THAT COURT SHOULD CONSIDER THE IRA TO BE A "FACTION" UNDER 18 USC 11. IF JUSTICE IS UNSUCCESSFUL, WE MAY HAVE TO FOLLOW COURSE OUTLINED ABOVE. KISSINGER

LIMITED OFFICIAL USE

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: ARMS, SMUGGLING, REPORTS
Control Number: n/a
Copy: SINGLE
Draft Date: 11 MAY 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: CunninFX
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976STATE115301
Document Source: CORE
Document Unique ID: 00
Drafter: JHSMITH:MFM
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D760182-0617
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760566/aaaacexd.tel
Line Count: 165
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN L
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: CunninFX
Review Comment: n/a
Review Content Flags:
Review Date: 29 APR 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <29 APR 2004 by ShawDG>; APPROVED <20 AUG 2004 by CunninFX>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: U.S. V. BYRNE, ET AL GENEVA FOR GEORGE ALDRICH, DEPUTY LEGAL ADVISER, LAWS OF
TAGS: MILI, CASC, EI, SZ, UK
To: DUBLIN LONDON
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006